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DEPT FOR EAP, EAP/MTS, INR/EAP, INL FOR CARLON,
DOJ FOR DAAG SWARTZ, OPDAT FOR BERMAN/ALEXANDRE/JOHNSON, OIA FOR
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SIPDIS
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TAGS: [PGOV](#) [KCRM](#) [KJUS](#) [SNAR](#) [ID](#)
SUBJECT: INDONESIA TRANSMITS ITS FIRST MUTUAL LEGAL ASSISTANCE
REQUEST TO THE U.S.

¶11. (SBU) SUMMARY: On April 13, 2009, Indonesia transmitted its first competent mutual legal assistance request to the U.S. for computer evidence relating to a corruption investigation. This request was a breakthrough because until now the formal Indonesian mutual legal assistance request regime has proven largely dysfunctional. This success was a result of the relationship built through providing direct, hands on assistance to the Ministry of Law and Human Rights.
End summary.

¶12. (SBU) The formal mutual legal assistance (MLA) system in Indonesia has never worked. Informal law enforcement requests, by contrast, have worked fairly well. Part of the problem is structural -- the 2006 Mutual Legal Assistance law placed the "Central Authority" for sending and receiving requests within the Ministry of Law and Human Rights, which has no operational capacity and lacks the authority to compel government agencies and private parties to satisfy requests. Therefore, the Ministry must convene an interagency meeting to consider each request. In addition, Indonesia's small Central Authority receives only a few dozen requests each year, and therefore lacks the necessary systems for routinely processing of MLA requests. By contrast, the US Central Authority, DOJ's Office of International Affairs (OIA), processes approximately 6000 incoming and outgoing foreign requests annually. As a result, despite the best of intentions and numerous donor-supported MLA conferences and training programs, MLA requests from the US and elsewhere disappear into a black hole, and Indonesia rarely issues its own. This lack of capacity hinders Indonesia's effort to cooperate in transnational criminal cases and forfeitures and has been an issue in our stalled ongoing Mutual Legal Assistance Treaty negotiations between the US and Indonesia.

¶13. (SBU) By contrast, the Indonesian National Police have been highly cooperative with U.S. law enforcement in exchanging information through informal assistance requests. However, these assistance requests have significant limitations. Where U.S. law enforcement must use court-ordered compulsion to obtain evidence requested by Indonesia, however, such as for bank records, computer records, witness depositions, or search warrants, the formal MLA process must be used under US law.

¶14. (SBU) In August 2008, the DOJ/OPDAT Resident Legal Advisor brought OIA's Regional Justice Attache, Robert Courtney, to Jakarta to embed himself within the Ministry of Law for four days to allow him to discuss issues with the both senior and junior members at the Central Authority on an informal basis. The Ministry provided him full access, even to their active MLA requests received from other countries, which allowed him to identify directly the legal, interagency, and internal managerial obstacles within the Indonesian MLA process. Based on this approach, Courtney prepared a detailed written report for the head of the Central Authority that identified potential solutions to management and interagency issues as well as

propose legal amendments to the 2006 MLA law. It also allowed DOJ to build a personal relationship with the members of department to facilitate future MLA requests.

¶15. (SBU) The benefits of this more hands on approach have resulted in the Ministry of Law's first success in sending a competent MLA request for US evidence. In January, the Corruption Eradication Commission (KPK) asked FBI Legatt, OIA and the RLA for assistance in obtaining certain electronic evidence from a United States Internet Service Provider (ISP) to aid a corruption investigation into a multi-million dollar government procurement fraud. Because this type of evidence requires a court order in the U.S., informal cooperation was not an option. When DOJ explained that the request had to originate from Indonesia's designated Central Authority in order for the US to satisfy it, the KPK initially protested, expressing their concern that the Ministry of Law could competently handle processing their request and that its confidentiality would not be maintained. In the ensuing weeks, however, OIA worked to rewrite the request into an internationally accepted format and helped move it through the laborious process within the Ministry of Law, before it was finally transmitted to DOJ on April 13, 2009.

¶16. (SBU) While the internal Indonesian process for this initial request was cumbersome and took months longer than should have been necessary, the KPK and Ministry of Law now have developed an acceptable template for future MLA requests. Without much needed additional legal authority and practical experience, it will still take several years before Indonesia can routinely make and satisfy MLA requests, but the transmission of this first request is a step forward.

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